Good international law essay example

Parts of the World, European Union

Introduction

Soft law refers to the quasi-legal instruments, which lack any legal binding force. Its binding force is less strong than the hard law. The term soft law is associated with the international law . However recently; the soft law has been included in the domestic laws. In the European unit measures, for example the guidelines, opinions and declarations soft law applies. However, in this union, the regulations and directives of soft law are non-binding to the addressed. This soft law can produce some effects. It is assumed that soft law may have impact on the policy development and practice precisely because of its absence of legal effect. This is because it practices an informal soft influence through demonstrating effects through pilot projects, which emphasizes possibilities and exerts an influence through persuasions . Soft law is presented sometime as flexible tool in achieving some policy objectives.

When the EU lacks competence to use hard law measures it applies the soft law. When the member state of EU is unable to agree on the use hard law, they apply the soft law. When member states of EU use soft law they are able to adopt policy proposals and the member who do not wish to bind by these measures are left to decide whether to use the hard law.

When some policies are presented through binding obligations, some member states may refuse. However when they use soft law, most of the member states will see the need of the policy and thus may adopt those policies. An example is the Commission, which has made extensive use of action programmes to fight for the equality of both men and women in the workplaces. Through the open method of coordination European

Employment, strategy implemented this policy after open method of coordination. This strategy, which was used, does not legally have binding effects. The EU nations use the non-legality binding community charter of the Fundamental Social Rights of workers of 1989 to put pressure on the member states to adopt directives, which might have been adopted However, as compared to the definition and application of soft law by the EU, definition of and application of soft law in Australia is quite. Soft law is defined in Australia negatively or it is expressed, as it is not. Soft law is defined as not primarily legislation enacted by the parliament of Australian parliament. Forms of hard law include the delegated legislation, which are made subject to the authority of Australia. Robert Baldwin describes what is left as tertiary legislation. These legislations are made without the expression of the authority or parliament. They are made without the express power legislation conferred by an Act of Australian parliament. This means these laws lack statutory or there are no clear statutory authorizations, which can make them directly enforceable rules and regulations. It is known that at common wealth, level in Australia secondary legislation is any instruments of legislative character or it is within a list of nominated instruments.

The problem with soft law in Australia is its asymmetrical operation. Take example for an emigration officer who has expertise in maritime engineering is better able to decide whether ships were seaworthy than the parliament itself. The parliament may use such expertise to issue directives to the responsible administration. The officers can formulate manuals as a means of structuring the discretion. This can become laws but the problem is that

when the manuals become soft the directives cannot become law. This is in the sense that they may not be enforceable against the will of the person to whom discretion of decision-making power is granted.

Another problem with the soft law is with its negative aspects. With this phenomenon, therefore soft law can be considered as “ curate egg” as the negative aspects of the soft law outweigh the importance of its positive aspects. Megarry describes two official announcements as “ regrettable”, where they contradicted with the statutory law. This is due to the effect that the statute cannot be altered in the book and cannot represent the effective law. Any legislative body cannot enforce the soft law but the officers cannot go against them. Megarry explain that the ‘ quasi-legislation’ is practical even in the absence of its legal statuses without legislative scrutiny and could not challengeable in the court of law. Megarry considers this quasi legislative to be crucial than the purpose to which the soft law is employed.

The breach of soft law in Australia will rarely be relevant to obtaining judicial review remedies. This is because the High court narrows itself to the enforceable of the soft law in Tang. This gives a problem to the person who wishes to have the benefit of soft law in that the traditional doctrine does not permit the High court to enforce such soft law. The person or decision maker who without flexibility applies the law or the policies without listening to the submission to make an exception makes a jurisdiction error.

Senden defines soft law as the rules of conduct that are laid down in instruments that had not been laid attributed legally as a binding force as such, but nevertheless, might have certain legal effects and are aimed at and may produce practical effects. It consists of the informal rules of which

are non-binding. On the other view, contradiction comes in due to the cultural norms or the standards of conduct might have an effect that may lead to a practical legal effect.

The soft-law makes a huge contribution in the making and implementation of the hard law. On the same note, it is clear that most of the ambitious norms often achieved under soft law than with the case of legally binding ones. The soft law offers excellent flexibility in respect to the mode of participation in defending the law and the sartorial emphasis. The hard law fights strongly with the political pressure asking the laggards to kindly loosen the binding rules but the soft law takes a great burden of adding the pressure itself on them and they finally give in to the terms set in by the soft law.

The soft law provides a staunch basement and structures for intrusive verification and on point review providing the part of explanation that reveals most of the evidence as revealed confirmation in the implementation edge. Most of the facts that build the hard law emerge from the already established.

In most of the situations, for example, the soft law applies on behalf of the hard law as seen in the EU context. The EU is where the member states find it unnecessary to use the already set hard law measures due to their feature of legal binding. It is clear that the EU also uses this type of law where they lack enough competence to enact the required hard law measures. The simplicity of forming the soft laws and their ease of application makes them more applicable by the European Union institutions and the Member States. Unbelievably, the soft-law adoption of the impassive policies and strategies' encourages the reluctant member states. The soft law applies in description

the various kinds of quasi-legal instruments under the European Union defined codes of conducts. Some of their use is that they to show how the European commission plans to use its strengths and perform its tasks as per within its area of competence.

Soft laws hold lots of potential and freely enable them to morph into hard law in time. This conversion of the soft laws into hard ones can be done in two ways; when the recommendations is the initial step towards the treaty making process through which direct reference is made to the principles already stated on the law. The second way through which the soft law can be " hardened" is through the non-treaty agreements that are formulation to give a direct influence on the states practices.

Equally, the soft law has enough measures that are no-legally binding making a substantial impact in exacting intense pressure on the commission to propose and on the other hand, the state members to adopt directives that would not have contemplated were it for the hard law. This provides a stepping stone by covering for the hard law which is often covered for by the soft law when its application doesn't match the activity.

Soft law is an all-encompassing phenomenon that is highly significant as a means of laying rules in Australia as it is in other global jurisdictions. In an international legal context, hard law can set basic provisions for enforcement by means of setting acceptable behavior standards attached with coercive and reputational penalty for breach. Hard law is observable in situations where internationally agreed commitments are factored into domestic law. When this occur the international law that has been incorporated into domestic legal system is no longer taken as international law but part of the

domestic legal forms of law, even though with an international law source. Nations choose the hard law perspectives at situations where the cost of breach is high as well as the benefit of cooperation. Other cases for choosing the hard law way is when states require to form unions such as NATO and EU, when it is difficult to detect noncompliance, when a state is in the need of facilitating the international credibility and finally when local agencies are powered in making agreements and the executive issues little control. International laws have been considered soft laws but the prevalent conditions mentioned above are the leading truth to argue the contribution of soft law to the hard law.

Many soft law instruments that have had effect on the Australian business, more specifically on the codes of conduct in the industries are binding in organizations. The achievement of its effects is dependent on the consent or contract entered between businesses and employees rather than the binding effect of that particular soft law instrument per se. The abiding to the codes of conduct of a particular industry is conditioned for the membership of the industry in question as it issues the codes. Governments are also in a position to set regulations to persons whom they enter into agreements with.

The Administrative Review Council in its Complex Regulation report, documented that, the effects of soft law instruments of the kind above is analogous to decisions of Superannuation Complaints Tribunal (SCT), to which the Australian trustees of Superannuation funds bind their trust for obtainment of tax concessions through their trusts which they are bound to it by contract. The operations of the codes of conduct in an industry are

beyond the scope of the administration law though its operation is subject to accountability. Soft law thus operates as hard law under the conditions of subjectivity to the specified legal provisions of organizations codes of conduct.

Considering the context of environment law and property law there exist controversial debate on what in the field of environmental law constitute soft law or principles or rules and which environmental treaties and policies have made to the strengthening of customary international law. It is argued that soft law is neither specific nor is it clear or binding in form or in content thus soft law in environmental context is not enforceable in character. However, in the consideration of intellectual property rights, it is argued that soft law instruments can be purposely applied generate hold for or to assist create binding hard law. There exist no rules to conclude that soft law contributes to hard law but each piece of soft law at times can or not serve as a source of hard law. However, there is likelihood that soft law is a step to the journey of strengthening hard law.

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